Criminal Misc. Writ Petition No.762 (M/B) of 2001

Mukesh Kumar and others ..... Petitioners

Versus

State of Uttaranchal and others.... Respondents

....

Hon.P.C.Verma,J.

Hon.M.C.Jain,J.

This writ petition has been filed by the petitioner for quashing the F.I.R. dated 14.5.2001 contained in Annexure 1 to this writ petition.

The petitioner was found at the spot selling High Speed Diesel. When the place of store of High Speed Diesel was raided, the petitioner ran away from the place where the High Speed Diesel was being sold. Sale of High Speed Diesel is regulated by control order issued by the Government of India.

Learned counsel for the petitioner placed before us U.P. High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supplies and Distribution) Order, 1981. Learned Counsel for the petitioner submits that in view of clause 17 of the said Control Order, the petitioner is entitled to retain a stock of diesel Oil upto the quantity of 200 liters and the stock found was only 190 liters. Therefore, The F.I.R. lodged is without jurisdiction and is liable to be quashed.

Clause 19 of the U.p. High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supplies and Distribution) Order, 1981 itself provides remedy for making representation before the Collector under section 6-C in any other case. In view of clause 19 of the aforesaid order, it is open to the petitioner to make representation to the Collector or Judicial Authority appointed under section 6-C of the Act. The U.P. High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supplies and Distribution) Order. 1981 exempts only

the tube well owners operated by diesel and tractor owners, but sale is completely regulated by the aforesaid control order. The petitioner could not explain to this Court that he is licence to sell diesel oil while from the F.I.R. it is clearly revealed that High Speed Diesel was kept there for the purposes of sale and sale was also made. On the sport, one liter measure was also found apart from lifting instrument. These facts in the F.I.R. disclose an offence that the petitioner was selling diesel oil without having licence.

So far as the offence is concerned, it is subject matter of investigation as the factual controversy relating to the conduct of the petitioner can not be gone into in the proceedings under Article 226 of the Constitution of India.

Therefore, for the reasons recorded above, the petition is dismissed.

(M.C. Jain, J.) **(P.C.Verma,J.)**

Dt. 28.08.2001

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